



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

MAY 10 2007

Kenneth R. Searce, Esq.  
Law Office of Kenneth R. Searce  
901 20<sup>th</sup> Avenue East  
Seattle, WA 98112

Re: MUR 5739  
Eastside Democracy for  
America

Dear Mr. Searce:

On May 9, 2006, the Federal Election Commission ("Commission") notified your client, Eastside Democracy for America ("EDFA"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 25, 2007, the Commission found, on the basis of the information in the complaint, information provided by your client, and other available information, that there is no reason to believe EDFA violated 2 U.S.C. §§ 441a(a)(1)(A) or 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Marianne Abely, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan  
Acting General Counsel

A handwritten signature in black ink, appearing to read "Ann Marie Terzaken".

BY: Ann Marie Terzaken  
Acting Associate General Counsel  
for Enforcement

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Eastside Democracy for America

MUR 5739

**I. FACTUAL BACKGROUND**

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This matter arises from a complaint alleging that Darcy Burner for Congress and Philip Lloyd, in his official capacity as treasurer ("Burner Committee"), violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by accepting and failing to report a corporate or excessive in-kind contribution from a group called Eastside Democracy for America ("EDFA"). According to the complaint, such violation resulted when EDFA hosted a campaign event for Burner, filmed Burner's speech at the event, and used the footage to produce and distribute a video promoting Burner's candidacy. The complaint also questions whether EDFA is a political action committee ("PAC") or "527 group," and asserts that EDFA is affiliated with Democracy for America ("DFA"), a PAC registered with the Federal Election Commission ("Commission"). The complaint also notes that EDFA may have posted copies of the video on the website of Democracy for Washington ("DFW"), a state political committee registered in Washington.

Eastside Democracy for America is a local grassroots organization based in Bellevue, Washington. The group was reportedly organized by two local citizens, Andrew Tsao and Richard Erwin, for the purpose of working toward an equitable, just, free and economically sustainable America by taking local action toward that goal. EDFA's approximately 75 members gather regularly to discuss local political issues, strategize ways to support Democratic candidates, and participate in volunteer activities.

During the 2006 election cycle, it appears that EDFA was actively involved in mobilizing voters to participate in local elections, including the race for the Congressional seat in Washington's 8<sup>th</sup> District. Darcy Burner was a candidate in the primary and general elections for that seat, and Darcy Burner for Congress was her principal campaign committee. *See* 2 U.S.C. § 432(e)(1). Prior to the Washington state primary election, EDFA invited Darcy Burner and her challenger to speak to its members at a "candidate forum." In preparation for the event, Tsao rented a meeting room at the Northwest Arts Center, a facility located in and owned by the city of Bellevue, Washington. The rental contract, which was signed by Tsao and makes no mention of EDFA, DFW, DFA, or the Burner Committee, indicates that he paid the standard fee of \$50 for the two-hour rental with his personal funds. EDFA publicized the event to members via a posting on a DFW website message board. Burner attended the October 10, 2005 meeting and delivered a speech, but her challenger declined.<sup>1</sup>

At the event, Tsao, an experienced professional television producer, director and actor, personally filmed Burner's speech with his own camera. He subsequently edited the footage and burned approximately 80 copies of the video onto individual DVDs. Tsao distributed 15 to 20 DVD copies to the Burner campaign, and made the remaining 60 copies available, free of charge, to citizen groups and local organizations.<sup>2</sup> Tsao also purportedly posted a copy of the video on his personal website, and the Burner Committee posted a copy on the campaign website.

In its original 2006 April Quarterly Report, the Burner Committee disclosed that it received an in-kind contribution from Tsao in the amount of \$22.50 on March 4, 2006 for

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<sup>1</sup> EDFA reportedly hosted a separate event for Burner's primary challenger, Randy Gordon, in November 2005

<sup>2</sup> It is unclear from EDFA's response and Tsao's affidavit whether any citizen groups accepted Tsao's offer to receive a copy of the video or what ultimately happened to the additional copies

“copies of video.” However, the Committee did not disclose a corresponding expenditure, and the Committee did not disclose any additional in-kind contributions from Tsao or EDFA during the 2006 election cycle.

The complaint in this matter alleges that the Burner Committee violated the Act by failing to report “disbursements and/or in-kind contributions, and receipt of excessive contributions, including possible ‘soft money’ corporate contributions” in connection with the EDFA event and video. Specifically, the complaint, which did not include a copy of the video in question, alleges that EDFA provided the campaign event and campaign video to the Burner Committee “free of charge,” and the Burner Committee failed to report either as a contribution, as required. The allegations are predicated on the complainant’s assertion that EDFA may be a PAC, 527 organization, or corporation.<sup>3</sup>

In response to the complaint, EDFA denies that it is a PAC, a 527 organization, or a corporation. Tsao contends that the group does not receive contributions or make disbursements beyond what individuals choose to pay for in connection with particular projects with their own funds. He further states that the group communicates primarily through postings on free, public Internet message boards, including message boards located on the websites of the groups DFW and DFA, and the available evidence indicates that EDFA does not have its own website or offices. As such, EDFA’s response contends that the event and videos were the voluntary effort of Andrew Tsao, and not attributable to any corporation, PAC, 527 organization, or non-profit group.

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<sup>3</sup> The complaint also states that EDFA is a local affiliate of the national Democracy for America PAC, and suggests that there may be a connection between EDFA and the Washington-state group Democracy for Washington

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As to the costs of the videos, Tsao asserts that, because he personally owns all of the equipment he used to record, edit and reproduce the DVDs, the only costs involved were for the disks themselves and the accompanying protective jewel cases. Tsao estimates that the total cost for hosting the event at which Darcy Burner spoke, filming the speech, editing and burning the DVDs, and distributing the copies was \$178.30.<sup>4</sup>

Tsao made a second, similar Burner video for the general election in February 2006. This video included an interview and footage of Burner speaking in her home, office, and on the campaign trail. Tsao states that he burned approximately 100 copies of the second video, provided 30 copies to the Burner campaign, and offered the remaining 70 copies, free of charge, to citizen groups and local organizations. He estimates that he spent \$116.57 to edit, burn and distribute the DVDs containing the second video.<sup>5</sup>

The Burner Committee's echoes the assertion that the costs associated with the event and videos were attributable to Andrew Tsao, not EDFA. The Committee admitted in its response that it should have reported an in-kind contribution in the amount of \$294.87 from Tsao in connection with the event and videos. A few days prior to submitting its response to the complaint, on June 20, 2006, the Committee amended its 2005 Year-End Report to include an in-kind contribution from Tsao of \$172.87, and amended its 2006 April Quarterly Report to include a \$122.00 in-kind contribution from Tsao.<sup>6</sup> According to the Committee's disclosure reports, Tsao also made five monetary contributions totaling \$1,750 to the Burner campaign during the

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<sup>4</sup> The \$178.30 includes the \$50 rental of the Northwest Arts Center on October 10, 2005 and the purchase of 80 DVDs for \$77.60 and 130 jewel cases for \$50.70.

<sup>5</sup> The \$116.57 includes the purchase of 100 DVDs for \$97.00 and 50 jewel cases for \$19.57.

<sup>6</sup> In addition to amending the 2005 Year-End and 2006 April Quarterly Reports to reflect the in-kind contributions, the Burner Committee also reported the amended amounts as expenditures.

2005-2006 election cycle, bringing Tsao's total contributions to \$2,044.87.

Democracy for America states that DFA is not affiliated with EDFA or any other respondent in this matter, has no connection whatsoever with the activities described in the complaint and had no prior knowledge of the event and video. Democracy for Washington did not formally respond to the complaint in this matter, but issued a press release stating that a copy of the Burner video at issue was not posted on the democracyforwashington.com website.

**I. LEGAL ANALYSIS**

The complaint alleges that EDFA may have made, and the Burner Committee may have accepted an excessive or corporate contribution from EDFA in connection with the EDFA event featuring Burner and the resulting video. *See* 2 U.S.C. §§ 441a(a)(1)(A), 441a(f), and 441b(a). The allegation regarding the corporate contribution is ostensibly based on the complainant's inability to confirm what type of organization EDFA is, e.g., corporation, PAC, or 527 group, and the allegation regarding the excessive contributions is based on an assertion that "the costs associated with producing a professionally edited campaign video would likely exceed \$5,000."

As an initial matter, it appears that EDFA is not a corporation. EDFA's states that it is not a corporation, and there is no available information suggesting otherwise. Regardless, the available evidence indicates that EDFA made no disbursements whatsoever in connection with the event and video. Rather, Tsao used his own personal funds to pay for the costs associated with the activities. Specifically, Tsao contracted and paid for the rental of the room where Burner delivered her speech and, as discussed above, the rental agreement signed by Tsao makes no mention of EDFA. Further, Tsao used his own equipment and expertise to film and edit the two videos about Darcy Burner, and purchased with his own funds the materials used to make copies of the DVDs. Thus, it appears that the costs associated with the candidate event and

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videos are attributable to Andrew Tsao rather than to EDFA. Therefore, the Commission finds no reason to believe that Eastside Democracy for America violated 2 U.S.C.

§§ 441a(a)(1)(A) or 441b(a) by making an excessive or corporate contribution to the Burner Committee.

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